IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 06-02-2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

TAX CASE (APPEAL) Nos.180,181,207,208 OF 2003, 76,77,683, 1119 OF 2004 AND 28,1141,1142 OF 2005

T.C.(A) No.180 OF 2003 :

Shri V.Mylswamy ... Appellant (in all the TCA cases)

-vs-

The Assistant Commissioner of Income Tax,
Special Investigation Circle-I,
Coimbatore. ... Respondent(in all the TCA cases)

These Tax Case Appeals filed under Section 260 A of the Income Tax Act, 1961 Appeal against the order of the Income Tax Appellate Tribunal 'A" Bench dated 23.08.2002 in ITA NO. 3398, 3399, 3400, 3401 and 3200/MAD/90 respectively and 1337/MDS/91 and CO NOS. 201, 202, 203, 204 and 205/MDS/90 and 40/MDS/91 (IN ITA NO. 3398, 3399, 3400, 3401 and 3200/MDS/90 and 1337/MDS/91 respectively for the Assessment year 1983-84 to 1988-89. as against the order dated 21.08.1990, 17.07.1990 and 15.05.1991 Appeal Nos. 267, 268, 269 and 271-C, 270-C and 45-C respectively on the file of the Commissioner of Income Tax (Appeals) Coimbatore as against the order dated 26.03.1990 and 19.03.1991-PA NO. T2578/SIC-1/CBE respectively on the file of the Assistant Commissioner of Income Tax Special Investigation Circle I, Coimbatore

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For appellant : Mr.P.J.Rishikesh
for M/s.Subbaraya Aiyar Padmanabhan

For respondent : Mr.T.Ravikumar,
Junior Standing Counsel.

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COMMON JUDGMENT

(Judgment of the Court was delivered by CHITRA VENKATARAMAN,J.)

The sum and substance of the questions of law raised in all these appeals is, whether the Tribunal was correct in confirming the orders of assessment for the years under consideration, in estimating the professional income of the appellant ? Apart from the said question common in all the appeals, the assessee had also questioned the validity of the reopening under Sec 147 in TC.NOs.180 & 181 of 2003, 1119/04 and 28/05, 76 & 77/04, 683/04 and 1141 and 1142/2004

1. The assessment years involved are:

TC NO	Assessment year
TC 180&181/03	1983-84
TC 1119/04 and TC 28/05	1984-85
TC 76&77/04	1985-86
TC 683/04	1986-87
TC 207&208/03	1987-88
TC 1141&1142	1988-89

2. These appeals are at the instance of the assessee. The assessee is an advocate by profession . The original assessment was completed on 20.03.1986 under Section 143 (3). Based on the materials seized in the search conducted in the premises of the assessee on 28-7-87, the assessments for the assessment years 1983-84 to 1986-87 were re-opened . The assessment for the assessment year 1987-88 was completed based on the orders for 1983-84 to 1986-87. The assessee resisted the reopening contending that when the assessing authority had all the materials on hand at the time of completion of the assessment, re-opening of the assessment without any fresh material was bad in law.

3. It is seen that in the appeal for the assessment for the year 87-88, the CIT (Appeals) held that no fresh investments had been detected during the search or by the Assessing Officer during the assessment year 87-88, either in the name of the assessee or in any benami name. In the circumstances, it was not possible to assume that the proceeds of the chits were utilized for any other investment. He also noted that the assessee's wife had admitted loan given to her husband out of the agricultural income she had. The Appellate authority also pointed out that the assessee had agricultural income declared from 900 trees and that the same was supported by the village officer's certificate. The

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Appellate authority also pointed out that the assessee had explained the utilization of the chit proceeds towards household expenses, chit contributions and repayment of earlier loans. The appellate authority also found that the assessee's professional income was estimated on a very conservative basis as against the returned income. Ultimately, the appellate authority accepted the returned agricultural income, however granted a partial reduction as regards the professional income. It may be seen that the pattern of treatment given to the appeals relating the various assessment years was a uniform one. The aggrieved Revenue went on appeal before the Tribunal. So too the assessee.

4. In the appeal preferred by the assessee he contended that when there were no fresh materials to be considered, the entire re-assessment made for the years 83-84 to 86-87 were totally without jurisdiction. He contended that the reopening itself was purely on change of opinion as such it was not maintainable. The assessee also questioned the estimation of income from the profession.

5. As regards the appeal preferred by the revenue, it challenged the reduction of taxable income as unsustainable as the estimation was based on materials seized at the time of search. By a common order, the Tribunal allowed the appeals of the Revenue and dismissed the Cross-appeal filed by the assessee.

6. Aggrieved of the same, the assessee has come on appeal before this Court.

7. Learned counsel appearing for the assessee raised the questions of law to the effect that the Tribunal erred in disregarding the specific ground raised in the Cross-objection as regards the re-opening of assessment under Section 147 of the Income Tax Act. He further agitated that the assessment for the years 1983-84 and 1984-85 was time barred. He also questioned the assumption of jurisdiction to re-open the assessment purely as a matter of change of opinion. He questioned the correctness of the order of the Tribunal confirming of the order of the assessment in fixing the professional income of the assessee. Equally the appellant has grievance has as regards the addition made on the ground that there was an invisible expenditure when the assessment was made under Section 132 of the Income Tax Act. He also questioned the assessment of the professional income on estimated basis when the returned income was accepted by the officer. As to the estimation on the agricultural income learned counsel
submitted that the appropriate authority arrived at the income based on evidence available on record. That apart, he questioned the correctness of the order in not giving credit to the returned income under profession and agriculture income and the correctness regarding the chit contribution made by the assessee for the

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assessment years 1986-87 and 1987-88 when the assessee was an income-tax assessee.

8. Learned counsel appearing for the appellant/assessee submitted that when the documents before the assessing authority were fully disclosed even at the original assessment stage, there was no ground for re-opening the assessment. He also pointed out that the assessee was a leading lawyer in Coimbatore and the entire exercise on reopening was made on mere surmises and conjectures, without any material. He also stated that the assessee and his wife have agricultural income, mainly from 900 coconut trees and, hence, the resources available at the hands of the assessee and his wife were good enough for contribution towards chits and household expenses. He further stated that the assessing authority ignored the income through agriculture, that considering the yield from 900 coconut trees, the assessee had given a fair return, supported by the Village Officer's certificate. Under the circumstances, he submitted that the estimated income was totally uncalled for.

9. Learned counsel for the assessee submitted his arguments mainly on the ground of estimates made.

10. On the other hand, learned Standing Counsel appearing for the Revenue supported the order of the Tribunal that the questions of fact are not to be interfered with in an appeal under Section 260A.

11. A perusal of the facts, as disclosed in the orders of the Tribunal and the authorities below show that the estimate of the income was made, taking a view that the income from profession was meager. The premise on which the assessing authority had proceeded with the re-assessment was that if the professional income had been accepted as returned, the assessee could not have made any investment at all from his earnings. It was also stated that the process of the chit was quite large. Quite apart from this, on the basis of his personal visit to the coconut garden the assessing authority, came to the conclusion that the yield from the coconut was not commensurate with the age of the trees. It was further held that the number of bunches and nuts were below normal. Consequently, as against the returned figure, the Officer reduced the income shown from agriculture. The Officer also commented that the assessee had a huge volume of professional engagement. As per the admission of few parties, the advocate had collected fees, ranging from 10% to 15% and, thus, he made an addition at an average of 12.5% every year, to result in the estimation of income. The Commissioner of Appeals took note of all the circumstances, particularly as regards the income from agriculture, which was supported by the Village Officer's certificate. Consequently, he held that the deduction of agricultural income is totally uncalled

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for. As regards the contribution to the chit through daughter, which was added as an income at the hands of the assessee, the Commissioner held that there are no materials to add it at the hands of the father. The appellate authority also noted that the chit proceeds were utilised at times for payment of loans and towards household expenses as well as chit contributions. He further pointed out that the estimation of expenses was excessive. Hence, taking note of the other sources of income and the number of cases handled in the Sessions Court, the Commissioner estimated the professional income at Rs.60,000/-, but, at the same time, rejected the income returned by the assessee. The CIT, however, directed the acceptance of agricultural income, as returned.

12. A perusal of the order of the Tribunal further shows that on a comparative analysis of the assessment order and the first appellate authority's order, it held that the order passed by the assessing authority was well reasoned and that the assessments were based on bank passbook and chit contributions made by the assessee, apart from the information revealed by the assessee in the course of examination. The Tribunal also held that to maintain himself as a good practitioner in legal profession, the assessee had to go in for a reasonable expenditure. Under the circumstances, it held that the order of the assessing authority was reasonable and to be accepted.

13. Although the Tribunal favoured the finding of the Assessing Authority, except for summary dealing of all the issues of assessment, there is no detailed analysis of the facts, projected by the assessee as well as the Revenue. Further, though there is extensive quoting from the Commissioner's order, absolutely, there are no reasons given in the order as to why the Commissioner's order was not accepted, to prefer the assessing authority's order.

14. Hence, we are constrained to go in depth into the facts considered by the authorities below. Although the income returned, estimated and assessed vary from one year to another, yet, considering the identical issues in all the years on the basis of estimation made, we accept the order of the Commissioner, who had gone into the facts in detail, particularly in his order, dated 17.07.1990, relating to the assessment year 1987-88.

15. A perusal of the assessment order shows that the total numbe rof land belonging to the ass and his wife were more or less equal in extent. There were 900 trees. For the ass year 83-84, the ass admitted an income of Rs. 15,000/- and in the next year Rs. 20,000/-. The Officer had stated that he had visited the coconut garden yet he records his impression that the yield of the coconut does not commensurate with the age of the trees. Except for this impression, there are absolutely no materials to support the income

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fixed by the assessing authority. As regards the professional income estimated, the assessing authority had stated that as per the admission of the few parties the advocate had collected fees ranging from 10% to 15%. The kind of approach by the AO as well as the Tribunal confirming the same lac ks any sense of direction as to the material that would afford them the basis to fix 10% or 15%. It is an admitted fact that in respect of the estimation of professional income, there are absolutely no materials. Except as a mere guesswork, we fail to see any substance in the approach of the authorities concerned. We would only add that it is totally unsafe to estimate the income of a professional purely on the number of cases handled in any particular period. Considering the reasonableness in the approach of the CIT (Appeals), and in the absence of any materials forthcoming from either the assessee or the Revenue, we restore the order of the Commissioner, both on account of the income crom agriculture as well as on the income on the professional front.

16. As regards the contribution to the chit and the expenditure on the domestic front, the assessee had explained that the chit proceeds were utilized towards chit contribution as well as for household expenses. The Appellate Authority had discussed about the explanation given and found that the estimate on household expenses at Rs. 72,000/- was excessive. He also noted that the Assessing Authority had not given a set off of the amount as against chit contribution by the wife, when the said sums were not used towards any other investment. In the light of the said discussion, by the Appellate Authority, which we find reasonable and plausible, given the fact that there were no fresh investments during that period, we accept the order of the first Appellate Authority. It may also be noted that the Revenue had not alleged any fresh investments during the period under consideration. The Tribunal had gone for a comparative analysis as that of the assessment order and the CIT (Appeals) order to ultimately accept the order of the assessing authority that the same was more reasonable to be upheld in preference tbleo the CIT (Appeals) order.As already stated in the preceding paragraphs, the first Appellate Authority and analysed the facts and the materials availagble to ultimately determine the income assessable taking an overall view in this matter. While it cannot be denied that a best judgment is a matter of estimation, yet even this is to be on materials which are capable of leading to a fair result in estimating the income of a person. An estimation hence needs to be logical to lead one to arrive at a conclusion that it is fair. In the light of the above, we reject the order of the Tribunal and restore the order of the Commissioner (Appeals) in all these cases.

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17. On the question of limitation, no serious arguments were advanced to consider the same, which are relevant to the assessment years 83-84 to 86-87 covered under TC 180 and 181/03 (83-84), TC 1119/04 (84-85), TC 28/05 (84-85), TC 76 and 77/04 (85-86) TC 683/04 (86-87).

18. In the above circumstances, we allow the appeals in part by restoring the order of the CIT (Appeals) in all these cases. No order as to costs.
Dixit

Sd/
Asst.Registrar

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Sub Asst.Registrar

To
1. The Assistant Registrar,
Income Tax Appellate Tribunal
III Floor, Rajaji Bhavan,
Besant Nagar, Chennai 600 090

2. The Commissioner of Income Tax (Appeals)
Coimbatore

3. The Assistant Commissioner of Income Tax
Special Investigation Circle I Coimbatore

+ one cc to the P.J. Rishikesh for M/s. Subbaraya Aiyar Advocate sr no. 7204
+6ccs to Mr. N. Muralikumaran, SSC (Income Tax) sr no. 7317, 7318, 7320, 7323 and 7324

ms(co)
nm(24.03.07)

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